

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NORMAN L. PRICER,

Plaintiff,

vs.

CIV No. 98-1310 JP/RLP

**STATE OF NEW MEXICO,
ENVIRONMENT DEPT.**

Defendant.

MEMORANDUM OPINION AND ORDER

On August 26, 1999, Plaintiff filed "Plaintiff's 8/2/99 Motion to Amend Complaint and Join Defendant Maggoire" (Doc. No. 23) under FED. R. CIV. P. 15(a) seeking to amend his complaint to add Peter Maggiore, in his individual capacity, as a defendant and to assert a Section 1983 claim against Mr. Maggiore for allegedly retaliating against Plaintiff in violation of the First Amendment.

Rule 15(a) states in relevant part that "a party may amend the party's pleading only by leave of the court . . . and leave shall be freely given when justice so requires." FED. R. CIV. P. 15(a). "In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment," leave to amend should be freely granted. *Foman v. Davis*, 371 U.S. 178, 182 (1962). The grant or denial of a motion to amend under FED. R. CIV. P. 15(a) is within the discretion of the trial court, although it is an abuse of discretion to deny a

motion to amend without providing justification. *Id.*

Having reviewed the briefs, I conclude that Plaintiff's motion should be granted. If further discovery is needed regarding the Section 1983 claim against Mr. Maggiore, the parties may file a motion to re-open discovery for this limited purpose. If the parties do not think they can be ready for the November 1, 1999, trial setting in light of my ruling, they should also file a motion to continue the trial setting.

IT IS THEREFORE ORDERED that "Plaintiff's 8/2/99 Motion to Amend Complaint and Join Defendant Maggoire" is GRANTED.


UNITED STATES DISTRICT JUDGE